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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,754	08/20/2008	Raymond Clarke	14753-1US	8444
93049	7590	05/24/2012		
Axiom Global Inc. 75 Spring Street, Floor 8 New York, NY 10012			EXAMINER SMITH, CHAIM A	
			ART UNIT 1782	PAPER NUMBER
			NOTIFICATION DATE 05/24/2012	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/596,754	CLARKE ET AL.	
	Examiner	Art Unit	
	CHAIM SMITH	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2012.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-12, 15 and 19-25 is/are pending in the application.
- 5a) Of the above claim(s) 11, 12 and 21-23 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-10, 15, 19, 20, 24 and 25 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/06/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Oath/Declaration

1. A new oath or declaration is required because the oath has been hand corrected. The wording of an oath or declaration cannot be amended. If the wording is not correct or if all of the required affirmations have not been made or if it has not been properly subscribed to, a new oath or declaration is required. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

3. **The following is a quotation of the first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1 – 10, 15, 19, 20, 24, and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s)

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contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Claims 1, 19, 20, and 24 now recite an auxiliary component “capable of providing an atmosphere that has a combined oxygen and carbon dioxide content of less than 18 percent”. The term “capable of providing” is seen to be claiming that the auxiliary component would comprise an active packaging component. Active packaging is understood to mean packaging having active functions beyond the inert passive containment and protection of the product. Such functions usually involve the ability to sense or measure an attribute of the product, such as the inner atmosphere of the package and then trigger an active packaging function such as oxygen absorption to control the interior atmosphere of the package. Applicant’s specification provides no support or disclosure regarding the sealed container comprising a film or component “capable of providing”, in other words, active packaging components and therefore this limitation is seen to raise an issue of new matter and as such must be removed from the claims.

6. Claims 2 – 10, 15, and 25 are rejected by virtue of their dependence on a rejected base claim.

7. **The following is a quotation of the second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1 – 10, 15, 19, 20, 24, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 1 now recites “wherein the MVTR of the HPC is 50 to 250”. No specific units have been claimed therefore this limitation cannot be evaluated. It is noted that applicant has disclosed that the appropriate units could be $\text{g/m}^2\cdot\text{hr}$ (i.e. per one hour) and also disclosed the appropriate units could be $\text{g/m}^2\cdot 24\text{hr}$ (i.e. per 24 hours, or per day). It is further noted, as well as disclosed by applicants, that the MVTR of a particular film depends not only on the MVTR of the material of the film but also on the specific thickness and area of the film. Since no particular thickness has been claimed these limitations also cannot be evaluated for this reason as well. It is also noted that the specification discloses that the MVTR could, “for example [be] measured in accordance with “ASTM E96” however no copy of the standard has been provided therefore an accurate assessment of the claims against the prior art cannot be made.

10. Regarding claim 2, it is unclear if the recited “an auxiliary component” is the same as the recited “an auxiliary component” of claim 1 or if this would be yet a separate auxiliary component.

11. Regarding claim 3 “wherein the MVTR is 50 to 165”, claim 3 is rejected similarly for the same reasons given above in the rejection of claim 1.

12. Claims 4 - 10, 15, 19, 20, 24, and 25 are rejected by virtue of their dependence on a rejected base claim.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1 – 7, 10, 19, 20, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke US 6,376,032 in view of Nir et al. US 6,190,710.

15. Regarding claims 1 and 7, Clarke discloses a method of storing a respiring produce (broccoli) (col. 9, paragraph 3, and example 13), wherein the respiring biological material is stored in a packaging atmosphere within a sealed container which comprises an auxiliary component comprising a second polymeric composition which is not an HYDROPHILIC POLYMER COMPOSITION, and through which pass oxygen and carbon dioxide entering or leaving the packaging atmosphere (col. 3, paragraph 5 continuing to col. 4). The sealed container comprises an auxiliary component which is able to provide an atmosphere that has a combined oxygen and carbon dioxide content of less than 18% as clearly disclosed by Clarke in table 6 ('032, col. 14).

16. Claims 1 and 7 differ from Clarke in the container having an interior surface at least part of which is composed of a particular hydrophilic polymer composition. Nir discloses a method of storing a respiring biological material (banana) ('710, col. 7, paragraph 4) in a packaging atmosphere in a sealed container which has an interior surface at least part of which is composed of a hydrophilic polymer composition (amides, esters) ('710, col. 1, Summary of the Invention). Nir is using a hydrophilic

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polymer composition to form a sealed container for the art recognized function of controlling the water vapor content generated by respiring biological materials in a controlled atmosphere package in order to at least increase shelf life and improve fungus resistance which is applicants' reason doing so as well. To therefore modify the sealed container of Clarke and use a hydrophilic polymer composition, such as a polyamide, would have been an obvious matter of choice and/or an obvious result effective variable.

17. Regarding claim 2, Clarke discloses the auxiliary component to be an atmosphere control member which comprises a microporous film having a coating of the second polymeric composition thereon (col. 2, paragraph 3) and an R ratio of at least 1.5 ('032, col. 3, paragraph 5 continuing to col. 4).

18. Claim 3 is rejected for the same reasons given above in the rejections of claims 1 and 2. Further Clarke in view of Nir disclose the hydrophilic polymer composition is at least part polyester (copolymers containing . . . esters) ('710, col. 3, paragraph 8)

19. Regarding claim 4, Clarke in view of Nir discloses the container comprises at least one first discrete section composed of the hydrophilic polymer composition (amides, esters) ('710, paragraph 8) and at least one second discrete section composed of the second polymeric composition (microporous polymeric film) ('032, col. 3, paragraph 5 continuing to col. 4).

20. Regarding claim 5, Clarke in view of Nir discloses the hydrophilic polymer composition provides at least 50% of the interior surface of sealed container (the

aperture can be, for example 5 to 50% of the total wall area of the container) ('032, col. 8, paragraph 4).

1. Regarding claim 6, it is well established that the preferred packaging atmosphere one would choose to provide in a packaging atmosphere would depend on the particular respiring biological material would choose to seal in the container. Nevertheless, Clarke discloses a packaging atmosphere would have an oxygen content of 2% and a carbon dioxide content of 5% ('032, col. 1, paragraph 6) and Nir discloses suitable packaging atmospheres would have an oxygen content of 4 – 5% oxygen and 5 – 10% carbon dioxide (col. 1, paragraph 11).

21. Regarding claim 7, Clarke discloses the auxiliary component comprises an atmosphere control member which comprises a microporous film with an average pore size less than 0.24 microns ('032, col. 4, paragraph 3).

22. Regarding claim 10, Clarke in view of Nir discloses the respiring biological material to be bananas ('710, col. 9, paragraph 3).

23. Regarding claims 19 and 20, Clarke in view of Nir discloses the hydrophilic polymer composition is in the form of a film having a window (aperture) therein, the auxiliary component covers the window ('032, col. 8, paragraph 4), is an atmosphere control member having a R ratio of at least 1.5 (col. 3, paragraph 5 continuing to col. 4), and comprises a microporous film having a coating of the non-hydrophilic polymer composition polymeric material thereon ('032, col. 2, paragraph 3). Further regarding claim 20, Clarke in view of Nir discloses the hydrophilic polymer composition would be in the form of a polyester film (the composition of the plastic packaging material includes

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. . . homopolymers or copolymers containing . . . esters" ('710, col. 1 paragraph 13) and the non-hydrophilic polymer composition comprises a side chain crystalline polymer ('032, col. 6, paragraph 1). Further regarding claims 19 and 29, Clarke discloses the film is able to provide an atmosphere that has a combined oxygen and carbon dioxide content of less than 18% as clearly disclosed by Clarke in table 6 ('032, col. 14).

24. Claims 24 and 25 are rejected for the same reasons given above in the rejections of claims 1, 19, and 20.

25. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke US 6,376,032 in view of Nir et al. US 6,190,710 in view of applicants admission of the prior art.

26. Regarding claims 8 and 9, applicants disclose a preferred film for the hydrophilic polymer composition of the container to be the hydrophilic polymer composition of Clarke in view of Nir (disclosure, page 5, paragraph 2). Since the hydrophilic polymer composition film of Clarke in view of Nir is the same film applicants disclose as being used in the container, it would be expected that a film consisting of the hydrophilic polymer composition of Clarke in view of Nir would, when exposed at 23° C to an atmosphere having a relative humidity of 50%, would have an equilibrium water content of at least 2.4%, by weight, based on the dry weight of the composition as claimed (MPEP 2112.01 II.).

27. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke US 6,376,032 in view of Nir et al. US 6,190,710 as further evidenced by Suga JP 7-257660.

28. Regarding claim 15, once it was known to use a hydrophilic polymer composition in the packaging of respiring biological material in a sealed container as disclosed by Clarke in view of Nir, the particular type of hydrophilic polymer composition one would choose to employ in the container would have been an obvious matter of choice based on the particular atmospheric requirements of the respiring biological material one would want to seal in the container. Selection of a known hydrophilic polymer composition to make a container from a type of hydrophilic polymer composition previously known would have been obvious (MPEP § 2144.07). Nevertheless, as further evidenced by Suga, the use of polylactic acid to make a sealed container in which to store a respiring biological material was conventional and well established.

Response to Arguments

29. Applicant's arguments filed 14 March 2012 have been fully and carefully considered but they are not found persuasive.

30. Regarding Nir applicants urge that Nir is varying the MVTR of nylon 6 and that the ordinarily skilled man would have no idea how to obtain the preferred range. Regarding a preferred range, this issue has been addressed above in the rejections under 35 U.S.C. 112 second paragraph.

31. Applicant urges that Nir requires the use of perforations and thus would not be suitable for use as a container material. This urging is not deemed persuasive.

32. While Nir discloses that the film may contain microperforations Nir only discloses that microperforations are preferred, not that they are required. Further it is noted that

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applicants' requirement that the film be "microporous" is also seen to be a form of perforation.

33. Regarding the oxygen content disclosed by Nir applicants urge that the examiner is incorrect. This urging is not found persuasive.

34. In this regards applicants' attention is directed to column 1, paragraph 11 of Nir where Nir unequivocally discloses that a preferred embodiment would comprise applicants' claimed ranges of oxygen and carbon dioxide.

Conclusion

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

36. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.

38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. S./
Chaim Smith
Examiner, Art Unit 1782
16 December 2012

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782